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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1973

Supreme Court, U.S.
FILED
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MICHAEL RODAK, JR., CLERK

No. 73-434

WILLIAM G. MILLIKEN, ET AL.

v.

RONALD G. BRADLEY, ET AL.,

No. 73-435

ALLEN PARK PUBLIC SCHOOLS, ET AL.,

v.

RONALD G. BRADLEY, ET AL.,

No. 73-436

THE GROSSE POINTE PUBLIC SCHOOL SYSTEM

v.

RONALD G. BRADLEY, ET AL.,

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE SIXTH CIRCUIT

MOTION

BRIEF FOR AMICUS CURIAE

INTER-FAITH CENTERS FOR
RACIAL JUSTICE, INC.

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IN THE
SUPREME COURT OF THE UNITED STATES

No. 73-434

WILLIAM G. MILLIKEN, ET AL.,

Appellants

v.

RONALD G. BRADLEY, ET AL.,

Appellees

MOTION FOR LEAVE TO FILE A BRIEF AMICUS CURIAE

NOW COMES the INTER-FAITH CENTERS FOR RACIAL JUSTICE, INC., by its attorney, WILLIAM T. DOWNS, and moves for leave to file brief Amicus Curiae, and in support thereof says:

1. That the Inter-Faith Centers for Racial Justice, Inc., is a non-profit corporation, organized and existing under the laws of the State of Michigan since July, 1969, and with the stated purpose "to ameliorate and/or eliminate attitudinal and institutional racial and ethnic bias or prejudice, . . ." in the Detroit metropolitan area.

2. That the Inter-Faith Centers for Racial Justice, Inc., is sponsored by religious denominations, namely: The American Lutheran Church; the Episcopal Diocese of Michigan; the Jewish Community Council; the Lutheran Church in America; the Roman Catholic Archdiocese of Detroit; the United Church of Christ; and the United Methodist Church.

3. That the Inter-Faith Centers for Racial Justice, Inc., is wholly supported by voluntary contributions and is organized on the basis of institutional and/or individual memberships; that it presently numbers ninety-six individual churches, parishes and

community organizations as institutional members, and over 500 individuals as members.

That in its effort to carry out this purpose the Inter-Faith Centers for Racial Justice, Inc., has worked extensively with groups of people in Detroit and the surrounding suburbs. People in the very geographic area which would be affected by any proposed school desegregation order.

5. As a consequence of the membership and organization described above, the Inter-Faith Centers for Racial Justice, Inc., is in a unique position to know and to assess public opinion and attitude in the specific areas of metropolitan Detroit which would be affected by the proposed order for pupil transportation in this case.

6. That because of its extensive involvement in the kind of issues which are raised in the instant case, the Inter-Faith Centers for Racial Justice, Inc., may be of unique assistance to the Court in better understanding the total situation, and in its review of the proposed remedy.

WHEREFORE, the Inter-Faith Centers for Racial Justice, Inc., prays that this Court grant leave to file Amicus Curiae, and accept the brief attached hereto.

Respectfully submitted

INTER-FAITH CENTERS
FOR RACIAL JUSTICE, INC.

BY _____
William T. Downs
Attorney

February 9, 1974

INTEREST OF AMICUS CURIAE

The Inter-Faith Centers for Racial Justice, Inc., has sought the consent of petitioners to the filing of a brief Amicus Curiae. The request resulted in the consent of the Attorney General and of Counsel for Allen Park Public Schools, et al. The Counsel for Grosse Pointe Public Schools neither agreed nor refused. (These letters are forwarded herewith to the Clerk of the Court.)

The Inter-Faith Centers for Racial Justice, Inc., is an interreligious [1] and interracial membership organization whose members live throughout the urban and suburban area of Metropolitan Detroit. [2] The organization was formed in July, 1969, as a means of more effective interfaith cooperation in the cause of racial justice. Since September, 1971, the organization has sponsored many public informational meetings, principally in suburban areas, in order to inform interested people about the progress of the school desegregation litigation and the fundamental issues involved. At times, these meetings have suffered harassment from persons who hold an extreme anti-busing point of view. In spite of this, an estimated 3,500 individuals have attended and taken part in these meetings. This experience has convinced members of this organization that whatever nomenclature may be employed in dusscussion of this issue, there is an underlying element of racial prejudice which pervades most, if not all, of that discussion. The organization has learned other things. There are substantial numbers of people, including some of our own membership, who are opposed to the transportation of pupils between districts, but who will accept this remedy as a means of correcting a greater wrong. There are presently a significant number of organized groups of

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[1] Sponsoring organizations include these religious groups:
American Lutheran Church, Michigan District
Episcopal Diocese of Michigan
Jewish Community Council of Metropolitan Detroit
Lutheran Church in America, Michigan Synod
Roman Catholic Archdiocese of Detroit
United Church of Christ, Detroit Metropolitan Association
United Methodist Church, Detroit Conference
United Presbyterian Church, Committee on Religion and Race.

[2] The individual members are drawn primarily from suburban areas and 90% of the membership is caucasian.

people who will undertake to facilitate the implementation of court-ordered school desegregation if, and when, an order is entered and the matter is settled.

The Inter-Faith Centers for Racial Justice, Inc., seeks this opportunity to participate as Amicus Curiae in order for the voice of such people to be heard. This was not an easy decision. There are members among sponsoring organizations who are opposed to cross-district busing in any form. There are members of sponsoring organizations who have joined the flight from the city. There are members of this organization who are fearful and anxious about the uncertainties of a prospective school desegregation order. Nevertheless, this organization has come to a painful and difficult decision because it believes, "There comes a time when one must take a stand, that is neither safe, nor politic, nor popular; but one must take it, because it is right",[3]

THE ARGUMENT

The briefs of Petitioners and Respondents in this cause will undoubtedly treat with the constitutional and legal issues of school desegregation, both extensively and intensively. At the same time, it may be helpful to simply and briefly state what Amicus understands to be the logical evolution and progression of constitutional interpretation as it applies to the law of desegregation of public schools.

I. CONSTITUTIONAL PERSPECTIVE

The members of this honorable Court are fully familiar with *Plessy* v. *Ferguson* [4] which pronounced the doctrine of 'separate but equal', and of the repudiation of that doctrine by the Supreme Court of the United States in *Brown* v. *School Board*.[5] *Plessy* was not a case involving public education, but its application and

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[3] Dr. Martin Luther King.

[4] *Plessy* v. *Ferguson*, 163 US 537, 41 L. Ed. 256 (1896).

[5] *Brown* v. *School Board of Topeka, Kansas* (Brown I), 347 US 483, 98 L. Ed. 873 (1954). *Brown* v. *School Board of Topeka, Kansas* (Brown II), 349 US 294 (1955).

acceptance in the field of public education,[6] and its use as justification for racially separated schools should be ssen as illustrative of the pervasive influence of that ruling upon American life. Your Amicus submits that the doctrine of *Plessy* became the mortar which bonded together the building blocks of racial separation in whatever form it appeared during the first half of the 20th century; whether it be the explicit form of legislation and ordinance, or the subtle and sophisticated form of suburb, zoning restrictions, real estate sales practices, or mortgage practices. In this sense, the blessing of *Plessy* appeared to give legal sanction to any device designed to culminate in racial separation. In this special sense, all activities which would produce the foreseeable result of racial separation are "de jure."

Brown repudiated the doctrine of 'separate but equal' and established, it is hoped, for all time that separate can never be equal. In perspective then, the challenge to the Courts, and to the nation, since *Brown* has been to find the ways and means to correct the overt and covert effects of *Plessy*.

We agree "that the Constitution should (not) be applied antithetically to children in the North and in the South."[7] Nor should the Constitution be applied differently to large or small cities, or to simple or complex urban areas. The happenstance of birth on one or the other side of a school district boundary, or of a county line, should not affect the guarantees of a constitution which extend throughout a nation. In the specific terms of the Detroit situation, residence on the south side of Eight Mile Road should embody no different constitutional and legal guarantees than residence on the north side of the same street.

II. THE FACT OF SEGREGATION

The record of the trial of this cause contains abundant evidence of the existence of segregation in the public schools of the

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[6] *Cumming* v. *County Board of Education*, 175 US 528, 44L. Ed. 262 (1899). *Gong Lum* v. *Rice*, 275 US 78, 72L. Ed. 172 (1927).

[7] *Cisneros* v. *Corpus Christi Independent School District*, 467 F. 2d 142, 148; Cert. den. _____ US _____, 37L. Ed. 2d 1044 (1973).

City of Detroit and of the existence of segregation in the public schools in the total metropolitan area of Detroit. Your Amicus strongly confirms the findings of the District Court contained in the ruling of September 27, 1971,[8] and further states that in its contact throughout the community no one has seriously denied such racial segregation in the public schools.

The District Court further found that acts and/or omissions of various agencies of the State of Michigan had caused, contributed to, or maintained this condition of racial segregation in the public schools of Detroit. Perhaps the most damning evidence was the passage of Public Act 48 in 1970.[9] This specific and flagrant act of the legislature which purported to reverse the plan of the Detroit Board of Education of April 7, 1970, stands out as the ugly pinnacle of State action which perpetuated racial segregation in the public schools of Detroit. It is argued that while admitting the existence of Public Act 48,[10] it was not the action of the people or suburbs which are now affected by the proposed school desegregation plan. It is also argued that the Public Act 48 [11] was motivated by a commitment to the neighborhood school concept, and only incidentally perpetuated segregation. The timing of the passage of this Act condemns this argument as specious. Further, any examination of the legislative history of Public Act 48[12] will disclose that it was the representatives of the very areas now affected by the proposed desegregation plan who pressed for its passage.[13] It is often said that representatives are responsible to their constituents; are not the constituents also responsible for what they demand from their representatives?

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[8] 338 F. Supp. 582 (E.D. Mich. 1971).

[9] Act 48, Mich. Pub. Acts of 1970.

[10] Act 48, Mich. Pub. Acts of 1970.

[11] Act 48, Mich. Pub. Acts of 1970.

[12] Act 48, Mich. Pub. Acts of 1970.

[13] Journal 88, House of Representatives, 75th Legislature, Regular Session, June 5, 1970, pp. 2157-2158. One petitioner has made a point of the vote of black legislators for Act 48. However, petitioner is citing the final vote on passage, and is ignoring the bitter struggle which preceded the routine business of final passage. Brief of Grosse Pointe Public School System at page 21.

At one point in the findings of June 14, 1972,[14] the Honorable Stephen J. Roth states that the issue since September 27, 1971, has never been *whether* to desegregate but rather *how* to desegregate. Amicus concurs. This being the case, both the school authorities and the Courts have an affirmative duty to eliminate "all vestiges" of segregation,[15] to destroy it "root and branch."[16]

III. METROPOLITAN REMEDY *V.* LOCAL CONTROL OF SCHOOLS

The only serious question is whether there is any reason to limit the mandate of the Constitution to the City of Detroit. Amicus strongly suggests that there is not. First, there is no constitutional reason, and no general policy reason, to limit relief from the constitutional abuse of segregation. Secondly, the facts of this case point consistently toward the necessity for, and propriety of, a metropolitan remedy.

A. Metropolitan Remedy

There is no constitutional reason to limit a desegregation order to a single school district. As this Court has pointed out, the Constitution recognizes only States, not their subdivisions.[17] The reapportionment cases demonstrate the Court's unwillingness to allow States to subordinate individual rights to the admitted interest of the States in conducting public business within pre-existing subdivision boundaries.[18] The Court took this course in the face of sharp warnings that it was entering a "political thicket."[19]

In the school desegregation area, it is now settled that school authorities may not divide a school district into two, when the "effect would be to impede the process of dismantling a dual

[14] *Bradley, et al* v. *Milliken et al*, 345 F. Supp. 914 (E.D. Mich. 1972).

[15] *Clark* v. *Board of Education of Little Rock*, 426 F. 2d 1035 (8th Cir. 1970).

[16] *Green* v. *County School Board of New Kent County*, 391 US 430, 20L Ed. 2d 716 (1968).

[17] *Reynolds* v. *Sims*, 377 US 533, 575; 12L Ed. 2d 506 (1964).

[18] *Reynolds* v. *Sims*, supra. *Gray* v. *Sanders*, 372 US 368, 9L. Ed. 2d 821 (1963). *Hadley* v. *Junior College District of Metropolitan Kansas City*, 397 US 50, 25L Ed. 2d 45 (1970).

[19] *Colgrove* v. *Green*, 328 US 549, 90L. Ed. 1432 (1946).

school system pursuant to Court orders."[20] The Fifth and Eighth Circuits have dealt with the reverse of this problem, and have required neighboring black and white school districts to merge after years of separate existence.[21] Both Circuits based their decisions upon findings that separate districts were created for the purpose of maintaining segregated schools. The finding of an intent to segregate seems unnecessary to the result however, in the light of this Court's subsequent *Wright* decision which focused on "the effect – not the purpose or motivation" of the school authorities.[22]

In view of these cases, it is clear that the Constitution does not stop on the south side of Eight Mile Road in Detroit. However, one may ask if there is a policy reason, existing outside the Constitution, for restricting a remedy to the school district containing most of the black students? Amicus can think of no such policy which is so important that it justifies leaving constitutional wrongs unremedied. Certainly, if an adequate remedy can be attained within the segregated school district, it would be unwise for a Court to impose a more sweeping remedy. Is a Detroit-only remedy adequate? The District Court, after thorough exploration, answered, NO! Amicus agrees.

There are several cogent reasons, based upon the specifics of the Detroit case, justifying a decree extending beyond the boundaries of Detroit.

First, the school children of Detroit are entitled to a complete remedy from the segregation imposed upon them. The District Court, quite reasonably, found that a remedy is impossible within the City itself, as every school would be identifiably black if only Detroit children were "desegregated." Assuming no more white children leave the Detroit public schools, a Detroit-only desegregation plan would create approximately seventy (70%) percent black schools within a metropolitan area that is approxi-

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[20] *Wright* v. *Council of the City of Emporia*, 407 US 451, 33L Ed. 2d 51 (1972).

[21] *U.S.* v. *Texas*, 447 F. 2d 441 (5th Cir. 1971). *Haney* v. *County Board of Education of Sevier County*, 410 F. 2d 920 (8th Cir. 1969).

[22] *Wright* v. *Council of the City of Emporia*, supra 407 US at p. 462. *Cisneros* v. *Corpus Christi Independent School District*, supra.

mately eighty (80%) white. It is commonly accepted in Southeastern Michigan that the white proportion of the Detroit schools would further decline precipitously in the next few years, leaving the entire school district over ninety (90%) black. Such a cure would be worse than the disease as it would give judicial sanction to racial separation along school district lines. [23]

Secondly, a Detroit-only plan, leading as it would to a black school system surrounded by white school systems, would leave the black pupils of Detroit even more vulnerable to discriminatory treatment by a suburban dominated State Legislature than they have been in the past. The Detroit School District, being the only first class district in the State and by far the largest district, can be the object of subtle discrimination ostensibly based on neutral factors; such as size or classification. Such discrimination already exists in State financial aid and transportation reimbursement, as the District Court has found. Complete racial identification of Detroit schools will only make discrimination more frequent and devastating, if history is any guide.

The third reason for extending a plan of desegregation to the suburbs lies in the fact that the Detroit Board of Education is not solely responsible for the segregation of the Detroit public schools. The entire State of Michigan expressly required Detroit to continue segregation when the Detroit Board of Education attempted to take steps to partially desegregate its schools. The will of the State of Michigan was expressed in Public Act 48, which the Sixth Circuit Court of Appeals has previously held unconstitutional.[24] Since the State, as a whole, is responsible for preserving a segregated Detroit, it is only just that the State be involved in eliminating that segregation. This conclusion is reinforced by the recollection that public debate on Public Act 48 was conducted in frankly racial terms,[25] and that many of the leading legislative supporters of the Act represented Detroit's suburbs. This history

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[23] Compare *Wright* v. *Council of the City of Emporia*, supra 407 US at p. 464 approving consideration by the District Court of foreseeable population shifts.

[24] *Bradley et al* v. *Milliken et al*, 433 F. 2d 897 (6th Cir. 1970).

[25] See, for example, one local newspaper, *Redford Record*, April 15, 1970.

of State and suburban involvement in Detroit's school segregation is sharply at odds with the effort of the Michigan Attorney General and suburban representatives in this case to assume the posture of innocent bystanders.

A final reason for adoption of a Metropolitan remedy lies in the origin and nature of housing segregation in Southeastern Michigan. The District Court found that residential segregation, as it exists in Metropolitan Detroit, results from Federal, State, local, and private efforts. It also found that the Detroit Board of Education defined its school attendance zones on the basis of the residential segregation created by this mixture of public and private action. Petitioners, while conceding the existence of segregation, would have us believe that the Court cannot remedy the situation because it is a result of housing patterns. The Fifth Circuit, U.S. Court of Appeals, has said, "we . . . reject this type of continued meaningless use of de facto and de jure nomenclature to attempt to establish a kind of ethnic and racial separation of students in public schools that Federal Courts are powerless to remedy."[26]

B. Local Control of Schools

Both the legal and public debate surrounding *Bradley* v. *Milliken* has frequently produced an alignment of groups verbalizing the legal hypothesis of local control of education, or the social concept of a neighborhood school, as the reason for denying a metropolitan remedy. This Court will recognize that these are chameleon terms, subject to varying interpretations and assuming new coloration from different points of view. Let us examine the meaning of local control of education, and the neighborhood school, as they exist in Michigan today.

The State Constitution clearly makes education the responsibility of the State:

> "Free public elementary and secondary schools; discrimination.
>
> SEC. 2. The legislature shall maintain and support a system of free public elementary and secondary schools as defined by law. Every school district shall provide for the education

[26] *Cisneros* v. *Corpus Christi Independent School District*, supra.

of its pupils without discrimination as to religion, creed, race, color or national origin."[27]

The Supreme Court of Michigan has ruled that a local Board of Education is a State agency[28] and that public education is not a part of local self government inherent in townships and municipalities.[29]

The local Board of Education may make an independent decision to construct a school facility; HOWEVER, that decision is subject to State law regarding the quality and specifications of construction,[30] and review of the plans, specifications, and site location by a State agency.[31]

If a local school board decides to construct a school, and requres financing in order to do so, it is true that the local board may determine to borrow the necessary funds; HOWEVER, its borrowing is controlled by State law,[32] and whatever financial arrangements it proposes are subject to review and approval by a State agency. [33]

The local school board may make an independent decision regarding the schedule which the schools within its district will follow; HOWEVER, that schedule is subject to the requirements of State law,[34] and the proposed class hours per day as well as the schedule of days is subject to review and approval by a State agency.[35]

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[27] Constitution of the State of Michigan, Article VIII, Sec. 2.

[28] *Board of Education of the City of Detroit* v. *Elliott*, 319 Mich. 436, 29 NW 2d 902 (1948). *Attorney General* v. *Lowrery*, 131 Mich. 639, 92 NW 289 (1902).

[29] *School District No. 1 Fractional Iron Township* v. *School District No. 2 Fractional, Chesterfield Township*, 340 Mich. 678, 66 NW 2d 92 (1954). *Attorney General* v. *Detroit Board of Education*, 154 Mich. 118 NW 606 (1908).

[30] Mich. Comp. Laws Annotated, 388.851,

[31] Mich. Comp. Laws Annotated, 388.851, Sec. 1(a).

[32] Mich. Comp. Laws Annotated, 340.220a.

[33] Mich. Comp. Laws Annotated, 131.1 et seq (Municipal Finance Commission).

[34] Mich. Comp. Laws Annotated, 340.575.

[35] School Districts Child Account for Distribution of State Aid, Bulletin No. 1005, Michigan State Department of Education (1970).

A local school board may make an independent decision regarding the curricula to be offered in its district; HOWEVER, that curriculum is subject to minimum requirements of State law,[36] and the course offerings are subject to review by a State agency.[37]

A local school board may make an independent decision to employ staff for its schools; HOWEVER, the qualifications of those employees are determined by State law, and a State agency certifies the eligibility of those potential employees.[38]

A local school board may make an independent decision to terminate employees; HOWEVER, the terms and conditions of such termination are controlled by State law, and the grounds of any specific termination are subject to review and approval or disapproval by a State Agency.[39]

A local school board may make an independent decision about the financing of the operation of its schools; HOWEVER, it will do so with the full knowledge that it is likely that approximately forty (40%) percent or more of its budget will be financed from State funds, and it cannot borrow in anticipation of State aid without approval.[40]

A local school board may make an independent decision to transport students to schools within its district for any one of a number of reasons; HOWEVER, it will do so with the full knowledge that approximately seventy-five (75%) of the cost of such transportation will be paid from State funds; except in the city of Detroit.[41]

From this enumeration, it can readily be seen that the State of Michigan is inextricably involved in purported "local decisions"

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[36] Mich. Comp. Laws Annotated, 257.811; Mich. Comp. Laws Annotated, 340.781-782; Mich. Comp. Laws Annotated, 388.371.

[37] Mich. Comp. Laws Annotated, 340.789.

[38] Mich. Comp. Laws Annotated, 340.570; Mich. Comp. Laws Annotated, 388.1010(a).

[39] *Long* v. *Board of Education District No. 1 Fractional, Royal Oak Township, City of Royal Oak*, 350 Mich. 324, 86 NW 2d 275 (1958).

[40] Mich. Comp. Laws Annotated, 340.567(a).

[41] *Bradley, et al* v. *Milliken, et al*, 484 F. 2d 215 (1973). p. 240-241.

in virtually every important aspect of school governance.[42]

The term neighborhood school is calculated to summon forth mental images of children playfully skipping across the street, or down the block, to their neighborhood school. However, this is an image from a bygone era, and does not comport with the reality of school life in Michigan, and specifically in the Southeastern part of Michigan which is the subject of the proposed order in this case. The record discloses that school districts within the counties of Wayne, Oakland, and Macomb are those likely to be affected by a school desegregation order. Transportation of school children is an accepted way of life in Michigan – forty (40%) percent of all students in Michigan are transported.

Within the tri-county area which would be affected by a metropolitan order, in the year 1970, 93,900 school children in Oakland County, 50% of those enrolled, regularly rode buses to and from school at a cost of $3,800,000; in Macomb County 41,300 school children, 42% of those enrolled, regularly rode buses to and from school at a cost of $2,228,000; and in Wayne County (outside of the City of Detroit) 64,000 school children, 52.5% of those enrolled, regularly rode buses to and from school, at a cost of $2,250,000. In 51 school districts of the three county area outside of Detroit, 199,200 students were transported by bus, a total of 11,671,000 miles, using 1783 vehicles at a cost of $8,278,000.[43]

In the face of this reality, the arguments of time, distance, and cost, so often advanced as reasons for denying a school desegregation order seem specious.

Amicus submits that contentions advanced by those who are opposed to the result of *Bradley* v. *Milliken* are a facade; a facade carefully designed to camouflage the desire and intention of preserving racially segregated schools in the Detroit metropolitan area.

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[42] State control in Michigan is markedly different than State control in Virginia considered in: *Bradley* v. *School Board of the City of Richmond*, 462 F. 2d 1058 (4th Cir. 1972), Affirmed by an equally divided Court, ___US___, 36L. Ed. 2d 771 (1973).

[43] Transportation Data, State Board of Education, for school year 1969-1970.

IV. VIOLATIONS BY AFFECTED SCHOOL DISTRICTS

It is argued, on behalf of petitioners, that segregative acts by school officials in affected suburban school districts is a necessary basis for including such districts in a remedial plan. This argument has a certain attractiveness. It makes an appeal to a certain visceral sense of fairness.

While Amicus believes that the petitioners are in error in their understanding of the law which shapes the remedy for school segregation,[44] it assumes that respondents have adequately briefed this issue.

Amicus believes that the argument of petitioners is without validity under present law, and that it can be adequately answered as follows:

1. Inasmuch as the United States Constitution, and particularly the Fourteenth Amendment, recognizes only States, and not subdivisions of States, the only finding necessary are those of State action, or inaction.[45] Specific findings of State responsibility were made in this case.

2. Once a condition of unconstitutional segregation in public schools has been found, then the issue becomes one of feasible desegregation, which by definition must involve schools predominantly of another race. The choice of schools to be involved in the remedy is determined by the remedial effect and not by the alleged guilt or innocence of the proposed school districts.[46]

Although believing the settled law to be dispositive of this issue, Amicus considers some further discussion to be in order. The contention of no suburban responsibility is sharply disputed. The prominent role of suburban legislators in the unconstitutional enactment of Public Act 48, 1970 has already been noted.

The lower Court found a pattern of conduct on the part of government at all levels, Federal, State, and local, combined with

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[44] *Bolling* v. *Sharpe*, 347 US 497, 98L. Ed. 884. (1954).

[45] *Hall* v. *St. Helena Parish School Board*, 197 F. Supp. 649, 658 (Ed. LA 1961). *Haney* v. *County Board of Education of Sevier County*, 429 F. 2d 364 (8th Cir. 1970). *Jenkins* v. *Township of Morris School District*, 279 F. 2d 617, 628 (N.J. 1971).

[46] *Swann* v. *Charlotte-Mecklenberg Board of Education*, 402 US 1, 15; 28L. Ed. 2d 554 (1971). *Davis* v. *Board of School Commissioners*, 402 US 33, 28L. Ed. 2d 586. (1971).

those of private organizations to establish and to maintain a pattern of residential segregation.

Let us consider only one part of the evidence upon which this finding was based – the Grosse Pointe "Point System". It is not disputed that the Grosse Pointe Brokers Association utilized a point system for rating prospective home buyers between the years of 1943-1960. This point system was designed to exclude Jews and Negroes.[47] From the existence of this discriminatory policy and practice over such an extended period of time, it can be inferred that there was a lack of local and State action which permitted its continuation.

Are the people of Grosse Pointe, having taken action to assure a harmonious neighborhood, now to be heard to say that all they want is a 'neighborhood school'? It is ludicrous for them to say that the Grosse Pointe School District is innocently congruent with the Grosse Pointe municipal lines for governmental convenience and to foster the neighborhood school concept. The perpetuation of school segregation is the first foreseeable result of the neighborhood school concept in Grosse Pointe, if it is not, in fact, the intended result.

If Amicus has a proper understanding of the position of petitioners; the petitioners are saying essentially this: that John Doe, Richard Roe, Jane Poe, Martha Zoe, and Joseph Coe may constitute a City Council, or a zoning board, meeting on Monday nights, which adopts policies and procedures which are designed to limit the population of that area to a certain economic and ethnic group of society. Those same people may meet together on Tuesday and Thursday to plan communities and arrange financing to serve a certain pre-determined economic, social, or ethnic group of society. On Wednesday nights those same people may meet together as a school board and with great impartiality make those day-to-day decisions in the governance of the school district which are designed to serve the homogenous population of that district. The petitioners argue that since the school board decisions are nondis-

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[47] *Rule 9: Politics, Administration, and Civil Rights*, Norman C. Thomas, Random House, New York, 1966.

criminatory, and since the school board finds itself elected by a racially identifiable population, it must serve that population; segregation is pure happenstance, and the school officials are free from any segregative acts.

Your Honors, racially identifiable school districts surrounding the City of Detroit are not a coincidence.

If Amicus has misconstrued prior decisions of this Court,[48] or if this Court now believes that in the situation of multiple school districts in a Metropolitan area there are peculiar factors which require evidence of segregative acts, then Amicus urges that this matter be remanded to the lower Court to conduct further hearings with the clear direction that any and all evidence relevant to the creation and continuation of housing segregation be received.

V. CONTEMPORARY CIRCUMSTANCES

The controversial character and the political ramifications of the Detroit School desegregation litigation is too well known to require elaboration.[49] The Executive Department of the United States government has recently announced its request to file a brief before this Court.[50] It behooves this Court to be fully informed regarding the current circumstances in the affected area and in the State of Michigan. Amicus undertakes to objectively present such information to the Court. The involvement of the State legislature of Michigan in the affairs of the Detroit school district by the enactment of Act 48 of Public Acts 1970 has been detailed in the proceeding of the Court below. Section 12 of this Act was properly found unconstitutional in subsequent Federal litigation.[51] One might think that this would discourage the State legilsature from such attempts. However, this is not the Case. Act 197 of Public Acts 1973, amended the Mass Transit Law to prohibit the use of revenues from the State gasoline tax to support any bus lines which transport students to promote integration.

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[48] Footnotes No. 45 and 46, supra.

[49] Detroit News, November 3, 1972, p. 16A.

[50] February 1, 1974.

[51] *Bradley, et al* v. *Milliken, et al*, 484 F. 2d 215 (1973).

One of the sponsors of the bill stated that the intention was clear to prevent the busing of students for purposes of integration, even and including the transportation of students *within* the City of Detroit.[52] Apparently the State legislature believes that it has considerable to say about what goes on within the so-called independent school districts.

The racial attitude of some suburban areas is so well known that some businessmen attempt to use it as leverage to secure selfish advantage. The readers of The Detroit Free Press[53] were recently exposed to the story of a Sterling Heights real estate developer who used the threat of integrated housing to compel the zoning board to grant a change from residential to commercial zoning.

These items are respectfully called to your attention so that you may have some feel for the present state of affairs in metropolitan Detroit. The school desegregation litigation has been a catalyst for hardening divisions among the population. It may be tactful and politic for the petitioners to describe these divisions in terms of the traditional urban-rural differences. The fact is that such a description in the context of the City of Detroit is a euphemism for describing a black-white division. The issue is controversial; however, community opposition is not a sufficient reason for limiting the remedy of school segregation.[54]

Regrettable as it may be, the reality is that the proposed school desegregation order controversy is superimposed upon a fabric of considerable racial conflict and tension. Consequently, positions taken for, or against, the remedy are interpreted almost solely in racial terms.[55] Any action by this Honorable Court which appears to deny the opportunity for reasonable desegregation of the Detroit schools will be perceived as a victory of whites only, and will be a giant backward step in the struggle for equal protection of the law.

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[52] Detroit Free Press, January 9, 1974.

[53] Detroit Free Press, January 17, 1974, p. 3A.

[54] *Monroe* v. *Board of Commissioners*, 391 US 450, 20L. Ed. 2d 733 (1968). *Cooper* v. *Aaron*, 358 US 1, 3L. Ed. 2d 3 (1958).

[55] Detroit Free Press, Sunday, May 7, 1972 (Report of a Survey).

VI. CONCLUSION

In the judgment of Amicus there is reliable evidence to support each and every finding of the Hon. Stephen J. Roth, and ample precedent to justify each and every ruling and order issued. While the orders may be more extensive and comprehensive than previously entered in such cases, they are necessitated by the realities of life in a complex metropolitan area. In the pursuit of justice, one should not hesitate because of the difficulties ahead.

Since *Brown II*, the Federal Courts have courageously moved forward to eradicate inequality in education based upon racial segregation. The Courts have done so within fundamental constitutional principles. One must ask if the inequality is any the less onerous because it occurs in three counties instead of one; or because the inequality is proliferated in multiple school districts instead of one. This unconstitutional condition must be rectified. Cross-district busing is an imperfect and burdensome way of doing so. Yet, no other solution is proposed. Let those who oppose, produce a better solution.

A metropolitan solution is required by the evidence, compelled by the Constitution, and demanded by justice.

WHEREFORE, Amicus prays that the conclusions and orden of the Sixth Circuit Court of Appeals, made in this cause, be affirmed.

Respectfully submitted,

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